

TITLE 3. DEPARTMENT OF FOOD AND AGRICULTURE

NOTICE IS HEREBY GIVEN that the Department of Food and Agriculture adopted Sections 3650, 3651, 3652, 3653, 3654, 3655, 3656, 3657, 3658, 3659, 3660, 3661, 3662, 3663, 3663.5 (Sections 3650 through 3663.5), of the regulations in Title 3 of the California Code of Regulations pertaining to Pierce's Disease Control Program as an emergency action that was effective on October 17, 2002. The Department proposes to continue the regulations as adopted and to complete the adoption process by submission of a Certificate of Compliance no later than February 14, 2003.

A public hearing is not scheduled. A public hearing will be held if any interested person, or his or her duly authorized representative, submits a written request for a public hearing to the Department no later than 15 days prior to the close of the written comment period. Following the public hearing if one is requested, or following the written comment period if no public hearing is requested, the Department of Food and Agriculture may certify that there was compliance with provisions of Section 11346.1 of the Government Code within 120 days of the emergency regulation.

Notice is also given that any person interested may present statements or arguments in writing relevant to the action proposed to the agency officer named below on or before January 20, 2003.

INFORMATIVE DIGEST//POLICY STATEMENT OVERVIEW

Existing law obligates the Department of Food and Agriculture to protect the agricultural industry in California and prevent the spread of injurious pests (Food and Agricultural Code, Sections 401 and 403). Existing law also provides that the Secretary may establish, maintain, and enforce such regulations, as he deems necessary, to prevent the spread of pests to protect California's agricultural industry (Food and Agricultural Code Section 5322). Sections 6045 through 6047 (Food and Agricultural Code) establish that *Xylella fastidiosa*, Pierce's disease, and its vectors present a clear and present danger to California's agricultural industry; establish a Pierce's Disease Control Program and Management Account with program funding appropriations; and establish authority to adopt regulations to effectuate the intent of these statutes.

The emergency adoption of Sections 3650 through 3663.5 established provisions for the Pierce's Disease Control Program including legislative intent and authority; general provisions for the control program, including work plan elements; definitions; area designation procedures; inspection of shipments and disposition of infested shipments; standards for movement and certification of bulk grapes, exemptions to those standards; standards for movement and certification of plants, including vector host plants, and exemptions to those standards; standards for movement and certification of bulk citrus, exceptions to those standards. These regulations provide more specificity regarding work plans, hosts, and industry activities than those emergency regulations originally adopted in 2000. The emergency filing also combined all regulations for the Pierce's Disease Control Program in one regulatory action.

The effect of these regulations is to provide authority for the State to regulate the movement of hosts or carriers of the GWSS by setting forth standards for movement. The intent of the regulations is to control Pierce's disease by preventing the artificial spread of the GWSS to non-infested areas to protect California's agricultural industry. There is no existing, comparable federal regulation or statute.

COST TO LOCAL AGENCIES AND SCHOOL DISTRICTS

The Department of Food and Agriculture has determined that Sections 3650 through 3663.5 do impose a mandate on local agencies, but not on school districts. Reimbursement will be made for costs resulting from this mandate from the Pierce's Disease Management Account established by the Legislature to combat Pierce's disease and its vectors. The Legislature authorized these funds to be allocated to those local public entities that develop Pierce's disease work plans that conform to statutory standards and are approved by the Department of Food and Agriculture.

The Department has also determined that the amended regulation will involve no additional costs or savings to any state agency because funds for state costs are already appropriated, no nondiscretionary costs or savings to local agencies or school districts, no reimbursable savings to local agencies or costs or savings to school districts under Section 17561 of the Government Code, funds for reimbursement for costs to local agencies have already been appropriated, and no costs or savings in federal funding to the State.

EFFECT ON HOUSING COSTS

The Department has made an initial determination that the proposed action will not affect housing costs.

EFFECT ON BUSINESSES

The Department has made an initial determination that the proposed action may have an adverse impact on some California businesses, including the ability of California businesses to compete with businesses in other states. These impacts would not be statewide and may only affect some of those businesses located within the glassy-winged sharpshooter (GWSS) infested areas. The economic impact on those California businesses is not expected to be significantly adverse when balanced against the protection provided to those businesses from costs or losses due to Pierce's disease or GWSS.

COST IMPACT ON REPRESENTATIVE PRIVATE PERSON OR BUSINESS

The cost impact of the emergency adopted regulation on a representative private person or business may be significant. A representative person or business could incur average costs of approximately \$3,255 per year in reasonable compliance with the proposed action. The actual costs will vary with the type and size of the affected businesses.

ASSESSMENT

The Department has made an assessment that the proposed amendments to the regulations would not (1) create or eliminate jobs within California, (2) create new business or eliminate existing businesses within California, or (3) affect the expansion of businesses currently doing business within California.

ALTERNATIVES CONSIDERED

The Department of Food and Agriculture must determine that no reasonable alternative considered by the Department

or that has otherwise been identified and brought to the attention of the Department would be

more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

AUTHORITY

The Department adopted Section 3650 pursuant to the authority vested by Sections 407, 5323 and 6047 of the Food and Agricultural Code of California.

The Department adopted Section 3651 pursuant to the authority vested by Sections 407 and 6047 of the Food and Agricultural Code of California.

The Department adopted Sections 3652, 3653, 3655, 3656, 3657, 3658, 3659, 3660, 3661, 3662, 3663, and 3663.5 pursuant to the authority vested by Sections 407 and 6047 of the Food and Agricultural Code of California.

The Department adopted Section 3654 pursuant to the authority vested by Sections 407, 6047, 6521 and 6523 of the Food and Agricultural Code of California.

REFERENCE

The Department adopted Section 3650 to implement, interpret and make specific Sections 5323, 6045, and 6046 of the Food and Agricultural Code of California.

The Department adopted Section 3651 to implement, interpret and make specific Sections 6045 and 6046 of the Food and Agricultural Code of California.

The Department adopted Sections 3652, 3653, 3655, 3656, 3657, 3658, 3659, 3660, 3661, 3662, 3663, and 3663.5 to implement, interpret and make specific Section 6045 of the Food and Agricultural Code of California.

The Department adopted Section 3654 to implement, interpret and make specific Sections 6045, 6521, 6522, 6523 and 6524 of the Food and Agricultural Code of California.

EFFECT ON SMALL BUSINESS

The amendment of this regulation may affect small businesses.

CONTACT

The agency officer to whom written comments and inquiries about the initial statement of reasons, proposed action, location of the rulemaking file, request for a public hearing, and final statement of reasons may be directed is: Stephen S. Brown, Department of Food and Agriculture, Plant Health and Pest Prevention Services, 1220 N Street, Room A-316, Sacramento, California 95814, (916) 654-1017, FAX (916) 654-1018, E-mail: sbrown@cdfa.ca.gov.

In his absence, you may contact Kris Peeples at (916) 654-1017. Questions regarding the substance of the proposed regulations should be directed to Stephen S. Brown.

INTERNET ACCESS

The Department has posted the information regarding this proposed regulatory action on its Internet website (www.cdfa.ca.gov/cdfa/pendingregs).

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The Department of Food and Agriculture has prepared an initial statement of reasons for the proposed action, has available all the information upon which its proposal is based, and has available the express terms of the proposed action. A copy of the initial statement of reasons and the proposed regulations in underline and strikeout form may be obtained upon request. The location of the information on which the proposal is based may also be obtained upon request. In addition, when completed the final statement of reasons will be available upon request. Requests should be directed to the contact named herein.

If the regulations adopted by the Department differ from, but are sufficiently related to the action proposed, they will be available to the public for at least 15 days prior to the date of adoption. Any person interested may obtain a copy of said regulations prior to the date of adoption by contacting the agency officer (contact) named herein.

DEPARTMENT OF FOOD AND AGRICULTURE

Date

Undersecretary